SUPREME COURT OF THE UNITED STATES
OCTOBER TERM 19_____

No._____

TERRY GEORGE, PETITIONER

VERSUS

STATE OF LOUISIANA

PETITION FOR WRIT OF CERTIORARI

Teddy Airhart, Jr.
7185 Scobell Drive
Baton Rouge, Louisiana

William C. Bradley
Post Office Box 475
Baker, Louisiana

MAY IT PLEASE THE COURT:

The petition of TERRY GEORGE, respectfully shows to this Honorable Court:

A.

Petitioner, Terry George, was indicted in the Nineteenth Judicial District Court, East Baton Rouge Parish, Louisiana, for an alleged simple battery, which is defined by the statutes of the State of Louisiana as a misdemeanor. On timely motion made, prior to trial petitioner filed his Motion for a Trial by Jury. The Louisiana statute then in effect, Article 779 of the Louisiana Code of Criminal Procedure provided that "a defendant charged with a misdemeanor shall be tried by the Court without a jury". The Trial Court summarily overruled petitioner's Motion for Trial by Jury, and upon trial had before the Honorable Fred S. LeBlanc, Judge, petitioner was found guilty and sentenced to serve one (1) year in the Parish Jail. The opinion of the Trial Court is unreported.

Timely appeal was made by petitioner, Terry George to the Honorable, The Supreme Court of the State of Louisiana, and the opinion of that Court affirming petitioner's conviction was entered by The Supreme Court on December 15, 1969, and is report at 229 So.2d 715.

Thereafter timely application for rehearing on behalf of petitioner, Terry George, was made to The Supreme Court of Louisiana, and on January 20, 1970, the same was refused.

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On February 24, 1970, petitioner applied to and received from The Supreme Court of the State of Louisiana a stay of execution for forty-five (45) days in which to apply to this Honorable Court for relief.

B.

The statutory provision under which this Honorable Court has jurisdiction to review the Judgment and Decree in question by Writ of Certiorari is contained in 28 U.S.C.A., Sec. 1651(a).

C.

Petitioner asserts and declares, as he has through all stages of the instant proceedings that under the Sixth Amendment of the United States Constitution which has been applied to State criminal proceedings, through the "due process" clause, he is now and was at the time of the filing of his said motion, entitled to a jury trial because in "all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and District wherein the crime shall have been committed...."

Sixth Amendment, U.S.Constitution.

D.

In a recent case from the U.S.Supreme Court, the rule was laid down as to what constitutes a serious crime in order to fall under the rights granted by the Constitution. In that case the Court rules that "a crime punishable by two years in prison is,....., a serious crime and not a petty offense." It stated that any crime punishable by more than six months would be deemed serious enough to warrant a trial by jury, and said that even though the sentence was for only sixty days the "penalty authorized for a particular crime is of major relevance in determining whether it is serious or not, and may in itself, if serious enough, subject the trial to the mandate of the Sixth Amendment." Duncan v. Louisiana, 391 U.S. 145,147 (1967)

Defendant strongly feels that his case falls directly within the decision in Duncan, in that he was tried and convicted of a serious crime of simple battery which at the time of the trial was punishable by a "fine of not more than three hundred ($300.00) Dollars or imprisonment for not more than two (2) years or both." LSA R.S. 14:35. This statute has since been amended following the ruling in Duncan to take it out of the class of serious crimes by imposing a six months sentence instead of a two year penalty. Acts 1968 No. 647, Section 1, July 20, 1968. However, the defendant asserts that since he was tried under the statute as it read prior to the 1968 amendment, he was tried for a serious crime and should

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be given the constitutional benefit of trial by jury.

The defendant further insist that even without Duncan, he should be granted a jury trial as he had timely asked for a jury trial at the Trial Court level and it was denied. He asserts he stands in the same legal relationship as the defendant in the Duncan case and should be granted all the constitutional rights as that defendant was given under the Sixth and Fourteenth Amendments. Defendant realizes that in a recent U. S. Supreme Court case that the Duncan ruling was given only a prospective application and only applied to cases beginning prior to May 20, 1968. DeStefano v. Woods, 392 U.S. 631 (1968). Since the defendant requested his right to trial by jury timely in the lower Court, he feels that his circumstances can be distinguished from those which fall under the DeStefano ruling.

WHEREFORE, your petitioner respectfully prays that a Writ of Certiorari be issued out of and under the seal of this Honorable Court, directed to The Supreme Court of the State of Louisiana, commanding that Court to certify and to send to this Court it's review and determination, on a day certain to be therein named, a full and complete transcript of the record and all proceedings in the case numbered and entitled on its docket NO. 49,789 STATE OF LOUISIANA v. TERRY GEORGE, Appellant, and that said judgment of the Supreme Court of the State of Louisiana may be reversed by this Honorable Court, and that your petitioner may have such other and further relief in the premises as to this Honorable Court may seem meet and just; and your petitioner will ever pray.

TERRY GEORGE

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STATE OF LOUISIANA

V. NO. 49,789
SUPREME COURT OF LOUISIANA

TERRY GEORGE

APPEAL FROM THE NINETEENTH JUDICIAL DISTRICT COURT, PARISH OF EAST BATON ROUGE, HON. FRED S. LE BLANC, JUDGE

FOURNET, Chief Justice.

The defendant, Terry George having been tried before a judge under a bill of indictment charging him with simple battery [1] prosecutes this appeal from his conviction and sentence, contending the proceedings are invalid and should be reversed on the ground the trial judge erred in denying his motion for trial by jury.

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1. L.R.S. 14:35 provides: "Simple battery is a battery, without the consent of the victim, committed without a dangerous weapon.

"Whoever commits simple battery shall be fined not more than three hundred dollars, or imprisoned for not more than two years or both."

Counsel for defendant argues that the Supreme Court of the United States in its recent decision in the case of Duncan v. Louisiana, 391 U.S. 145, 88 S.Ct. 1444, 20 L.Ed 2d 491, held a crime punishable by more than 6 months imprisonment warrants a trial by jury in the state court under the Sixth Amendment of the United States Constitution which has been applied to state action through the due process clause of the Fourteenth Amendment; and inasmuch as the penalty that may have been imposed within the discretion of the court under the law of the State of Louisiana at the time of the trial[2] (April 8 and 9, 1968) for the crime of simple battery was a fine of not more than $300 or imprisonment for not more than two years, or both, L.R.S. 14:35, counsel for defendant maintains he had a right to a trial

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2. At the time of defendant's conviction the Code of Criminal Procedure specifically provided, "A defendant charged with a misdemeanor shall be tried by the court without a jury." Article 779. However, the article has since been amended by Act. no. 635 of the 1968 to comply with the ruling of the United States Supreme Court in the Duncan case.

by jury, although, conceding as he must, that the rule was only given prospective application by the United States Supreme Court in its later decision of DeStefano v. Woods, [3] 392 U.S. 631, 88 S.Ct.2093, 20 L.Ed2d 308, wherein the court most explicitly stated. "* * * We will not reverse state convictions for failure to grant jury trials where trials began prior to May 20, 1968, the date of this Court's decision in Duncan v. Louisiana and Bloom v. Illinois." (Emphasis added.) Nevertheless, counsel, realizing since the trial and conviction of the defendant took place prior to May 20, 1968, the Duncan case is, therefore, not controlling, advances the argument that the fact that he timely requested trial by jury distinguished the circumstances under which the DeStefano ruling fell, and inasmuch as the case is now on appeal, his rights are vested under the Constitution of the United States.

Counsel not only did not assign

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3. The pronouncement in the DeStefano case has since been followed by this court in State v. Beer, 252 La. 756, 215 So. 2d 133, and State v. Watson, 252 La. 649, 212 So. 2d 415.

any authority in support of this ingenious argument, but obviously overlooked the observation of the United States Supreme Court in footnote two of the DeStefano case, "We see no basis for a distinction between convictions that have become final and cases at various stages of trial and appeal." Moreover, it is apt to point out that counsel neither alleged nor does he now claim that the defendant did not receive a fair and impartial trial. (Emphasis added).

Although counsel did not brief the remaining three bills of exception, each being reserved to questions propounded by the prosecuting attorney to which objection by the defense counsel was overruled, we have given them due consideration, and found them lacking in merit.

For the reasons assigned the conviction and sentence are affirmed.

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